



Commonwealth of Massachusetts State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-371-9500, fax: 617-723-5851



May 1, 2007

David Aragona
177 Mills Street
Malden, MA 02148

Re: Public Education Letter

Dear Mr. Aragona:

As you know, the State Ethics Commission conducted a preliminary inquiry into allegations that you, as a Massachusetts Convention Center Authority (MCCA) employee, violated § 23(b)(2) of the state conflict of interest law, G.L. c. 268A, by attending Board of State Examiners of Electricians ("Electricians Board") meetings while on state time and while receiving state compensation. Based on the staff's inquiry (discussed below), the Commission voted on March 14, 2007, that there is reasonable cause to believe that you violated G.L. c. 268A, § 23(b)(2).

For the reasons discussed below, the Commission does not believe that further proceedings in your case are warranted. Instead, the Commission has determined that the public interest would be better served by bringing to your attention, and to the public's attention, the facts revealed by the preliminary inquiry, and by explaining the application of the law to the facts, with the expectation that this advice will ensure your understanding of and future compliance with these provisions of the conflict-of-interest law. By agreeing to this public letter as a final resolution of this matter, you do not admit to the facts and law discussed below. The Commission and you have agreed that there will be no formal action against you in this matter and that you have chosen not to exercise your right to a hearing before the Commission.

I. Facts

You have been employed by the MCCA since 1988. You are currently a sound technician based at the Boston Convention & Exhibition Center (BCEC) in south Boston. In that role, you install sound systems and Internet connections for shows that come to the BCEC. You are scheduled to work a "straight eight" schedule from 6:00 a.m. to 2:00 p.m.

You were appointed to the Electricians Board in October 2002 as a "system technician member." The Electricians Board meets once each month in Boston from approximately 10 a.m. until around 3:30 p.m. Electricians Board members are not compensated. Electricians Board meetings consist of hearings in which customers of electricians or electrical inspectors present complaints or problems.

You attended Electricians Board meetings during your regular MCCA working hours while receiving MCCA compensation. You did not receive written approval from your appointing authority (as discussed in detail below) prior to attending such meetings. You believed that your experience as an Electricians Board member was beneficial to your work as an MCCA sound technician.

II. Discussion

As an MCCA sound technician, you are a state employee as that term is defined in G.L. c. 268A, § 1(q). As such, you were subject to the conflict of interest law G.L. c. 268A generally and, in particular for the purposes of this discussion, to § 23 of that statute. Section 23(b)(2) prohibits any state employee from knowingly, or with reason to know, using or attempting to use his official position to secure for anyone an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

There is reasonable cause to believe that you violated § 23(b)(2) by using your MCCA position to attend Electricians Board meetings while on MCCA time and while receiving MCCA compensation without prior written approval from your appointing authority.¹

You should be aware that under certain circumstances, a public employee may receive compensation when not performing his usual job responsibilities. In *EC-COI-98-2*, the Commission found that § 23(b)(2) permitted the chief of the Administrative Law Division of the Office of the Attorney General to use state time and state resources, to the extent necessary, to perform duties as chair of the public law section of the Massachusetts Bar Association if she met three conditions: (i) are the duties in furtherance of the public interest?; (ii) are the duties interconnected with her duties as division chief?; and (iii) are the duties not used toward partisan political ends? Furthermore, the Commission emphasized the importance of the appointing authority's written approval of her proposed use of state time and resources, with such written approval specifying that her use of state time and resources satisfies these three conditions. These three conditions must be satisfied regardless of how the public time and resources are utilized (for example, *EC-COI-98-2* involved non-profit activities while your situation involved a second public position).

In the future, should you want to attend Electricians Board meetings during your regular working hours, you would need to comply with the above requirements and receive specific written authorization from your appointing authority.

III. Disposition

The Commission is authorized to resolve violations of G.L. c. 268A with civil penalties of up to \$2,000 for each violation. The Commission chose to resolve this case with an education letter rather than imposing a fine because it believes the public interest would best be served by doing so. Public employees may not receive compensation when not performing their usual job responsibilities unless they receive prior written approval consistent with *EC-COI-98-2*. The purpose of this public education letter is to emphasize that point.

¹ Your being an MCCA employee and serving as an Electricians Board member raises concerns under G.L. c. 268A, § 7. Section 7 prohibits a state employee from having a financial interest, directly or indirectly, in a contract made by a state agency, in which the commonwealth or a state agency is an interested party. You are, however, a special state employee as an Electrician Boards member. As such, there would be an exemption available to you under § 7(d) which provides that the section does not apply, "to a special state employee who does not participate in or have official responsibility for any of the activities of the contracting agency and who files with the state ethics commission a statement making full disclosure of his interest and the interest of his immediate family in the contract." We call your attention to the Commission's website [www.mass.gov/ethics] for your future guidance, and particularly to *Disclosure of Financial Interest by Special State Employee as required by G.L.c.268A § 7(d)*, which may be found under Commission Disclosure Forms. You should file your disclosure form as soon as possible if you would like an exemption to hold both public positions.

Based upon its review of this matter, the Commission has determined that your receipt of this public education letter should be sufficient to ensure your understanding of and future compliance with the conflict of interest law.

This matter is now closed.

Very truly yours,

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Peter Sturges
Executive Director